

**Ala. Code 1975, § 13A-3-26**

**Use of Force in Defense of Property Other than Premises**

One of the issues in this case is the use of force in defense of property.

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that he/she reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief with respect to property other than premises.

For the defendant's use of force in defense of property to be justified, the force must have been used under the following circumstances:

- (1) The defendant must have reasonably believed it to be necessary to prevent or terminate the commission or attempted commission by the other person of a theft or a criminal mischief;
- (2) The defendant must not have used deadly physical force and must have used no more force than he/she reasonably believed to be necessary for the purpose of defense; **(AND)**
- (3) The defendant was defending property other than premises.

*Force* is physical action or threat against another, including confinement. [13A-3-20(4)]

*Deadly physical force* is force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. [13A-3-20(2)]

A *reasonable belief* is a belief formed in reliance upon reasonable appearances. It is a belief not formed recklessly or negligently. The test of reasonableness is not whether the defendant was correct in his/her belief but whether the belief was reasonable under the circumstances existing at the time. (Commentary)

**[Read if Criminal Trespass or Arson I or II]** - *Premises* includes any building and any real property. [13A-3-20(5)]

A *building* is a structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of two or more units separately occupied or secured is a separate building. [13A-3-20(1)]

A *vehicle* is a motorized conveyance which is designed to transport people or property. [13A-3-20(7)]

The defendant is not justified in using physical force if: **[Read appropriate part]**

- (1) With intent to cause physical injury or death to another person, he/she provoked the use of unlawful physical force by such other person;
- (2) The defendant was the initial aggressor, except that his/her use of physical force upon another person under the circumstances is justifiable if he/she withdraws from the encounter and effectively communicates to the other person his/her intent to do so, but the other person continues or threatens the use of unlawful physical force; **(OR)**
- (3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

The defendant does not have the burden of proving that he/she acted in defense of his/her property. To the contrary, once self-defense becomes an issue, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

### **Use Notes**

If a person is justified or excused in using force against a person, but he/she recklessly or negligently injures or creates a substantial injury to another person, the justification is unavailable in a prosecution for recklessness or negligence. [13A-3-21]

Unless inconsistent with a provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his/her official powers, duties or functions. [13A-3-22]

A person may not use physical force to resist a lawful arrest by a peace officer who is known or reasonably appears to be a peace officer. [13A-3-28]

[Approved 10-17-14.]